IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 80 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH-TAX

Versus

VIJAYKUNVERBA

Appearance:

1. WEALTH TAX REFERENCE No. 80 of 1991

MS. MAUNA M BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 14/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the Revenue, the following question of law arising out of an order passed by the

Income-Tax Appellate Tribunal, Ahmedabad Bench 'B' has been referred to this Court under the provisions of Section 27 (1) of the Wealth-tax Act, 1957 (hereinafter referred to as 'the Act'):

> "Whether, on the facts and in the circumstances of the case the Tribunal was right in law in setting aside the order of the Commissioner of Wealth-tax so far as it related to the refund amount of Rs.29,511/- and lease rent Rs.4000/-?"

2. Learned Standing Counsel Ms. Mauna Bhatt has appeared for the applicant - revenue whereas nobody has appeared for the respondent though the respondent has been duly served with the notice of this Court.

3. The facts giving rise to this reference, in a nut-shell, are as under:

3.1. Though the assessee had to recover a sum of Rs.4,000/- by way of lease rent and a sum of Rs.29,511/- from Income-tax Department towards her refund, the said amount had not been included in her wealth shown in the return of wealth filed by the assessee for the assessment year 1974-75. After the assessee was assessed, the Commissioner of Wealth-tax had exercised his powers under Section 25 (2) of the Act and had directed the Wealth Tax Officer to include the afore-stated two assets in the net wealth of the assessee on the ground that the said amount had become due and payable to the assessee on the date of valuation.

3.2. Being aggrieved by the said order passed by the Commissioner of Wealth-tax, the assessee filed an appeal before the Tribunal. Before the Tribunal, it was contended on behalf of the assessee that the assessee was maintaining her books of accounts on cash basis and, therefore, the total amount referred to hereinabove could not have been included in the wealth of the assessee. The Tribunal allowed the appeal. In the circumstances, the afore-stated question has been referred to this Court.

4. Learned standing counsel for the revenue has submitted that the amount of Income-tax refund and the amount of lease rent which the assessee had to receive from the Income-tax Department and her lessee respectively, was an asset of the assessee and, therefore, the Commissioner of Wealth-tax had rightly directed the Wealth-tax Officer under the provisions for Section 25 (2) of the Act to include the said amount as

assets in the net wealth of the assessee.

5. She has drawn our attention to the order passed by the Tribunal. Before the Tribunal it was argued on behalf of the assessee that as the assessee was maintaining her books of accounts on cash basis, the amount which had not been received by the assessee could not have been included in the net wealth of the assessee. So as to substantiate the said argument on behalf of the assessee, judgment delivered in the case of Commissioner of Wealth-tax, Bihar and Orissa v. Vysyaraju Badreenarayanamoorthy Raju, 79 ITR 330 was relied upon. On the other hand, it was submitted on behalf of the revenue that the amount which was to be paid by the Income-tax Department as well as by the lessee to the assessee would be assets of the assessee and, therefore, the said amount should have been included in the net wealth of the assessee. It has been therefore submitted on behalf of the Revenue before the Tribunal that the Commissioner of Wealth-tax had rightly given direction under the provisions for Section 25 (2) of the Act to include the said amount in the net wealth of the assessee. On behalf of the revenue, judgment delivered in the case of Dipti Kumar Basu v. Commissioner of Wealth-tax, West Bengal, 105 ITR 450 had been relied upon.

6. The learned standing counsel has submitted that during the pendency of this reference, the question which has been referred to this Court has already been decided by the Honourable Supreme Court. It has been submitted by her that the judgment delivered by the Orissa High Court in the case of Commissioner of Wealth-tax, Bihar and Orissa v. Vysyaraju Badreenarayanamoorthy Raju (supra), which was relied upon by the Tribunal while allowing the appeal filed by the assessee, has been now overruled. It has been further submitted by her that the Honourable Supreme Court has expressly observed in the judgment delivered in the case of Commissioner of Wealth-tax, Orissa v. Vysyaraju Badreenarayana Moorthy Raju, 152 ITR 454 that "all the assets of the assessee, barring those expressly excepted by the statute, are to be taken into account, and it is immaterial whether the assessee employs one system of account or another. There is clear indication that the assets to be considered are not circumscribed by any consideration of the particular system of accounting adopted by the assessee. The assets are not confined to cash. Where the asset is an asset other than cash, its value if determined pursuant to sub-sec. (1) of s.7 as the estimated price, which, in the opinion of the WTO, the asset would fetch if sold in

the open market on the valuation date."

7. It has been thereafter submitted by her that the Tribunal had not followed the judgment delivered in the case of Dipti Kumar Basu v. Commissioner of Wealth-tax, West Bengal, 105 ITR 450 which was cited before it by the revenue but subsequently, the Honourable Supreme Court, in the case of Henry Joshua Silverston v. Commissioner of Wealth-tax, 192 ITR 296 has approved the view expressed by the Calcutta High Court in Dipti Kumar Basu v. Commissioner of Wealth-tax (supra).

8. Relying upon the aforestated two judgments delivered by the Honourable Supreme Court, it has been submitted by the learned standing counsel appearing for the revenue that the system of accounting adopted by the assessee is absolutely irrelevant and looking to the said fact, the Tribunal ought not to have allowed the appeal by setting aside the order passed by the Commissioner of Wealth-tax under the provisions of Section 25 (2) of the Act.

9. Even if we look at the definition of the term "assets" in Section 2 (e) of the Act, the said term would include property of every description, movable or immoveable, except those which have been specifically excluded. Upon perusal of the definition, it is very clear that any debt, which is owed by anybody to the assessee, would be a property of the assessee and therefore it would be included in the assets of the assessee irrespective of the system of accounting followed by the assessee.

10. Looking to the aforestated judgments delivered by the Honourable Supreme Court and the legal position, in our opinion, the Commissioner of Wealth-tax was right when he directed the Wealth-tax Officer under Section 25 (2) of the Act to include the aforestated two assets in the net wealth of the assessee.

11. For the above referred reasons, we answer the question in the negative, that is, against the assessee and in favour of the revenue.

12. The reference stands disposed of with no order as to costs.

(A.R. Dave, J.)

(A.M. Kapadia, J.)

(karan)